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**Saylor's, Inc. and Local 67, Operative Plasterers' and Cement Masons' International Association of The United States and Canada, AFL-CIO, Petitioner and Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, Intervenor.** Case 7-RC-22037

September 30, 2002

ORDER DENYING REVIEW

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The National Labor Relations Board has carefully considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.

The Petitioner's request for review contends that the Regional Director erred in finding (1) that a 9(a) relationship was established by the contractual language in the collective-bargaining agreement between the Employer and the Intervenor and (2) that the Petitioner's challenge to the Intervenor's 9(a) status, occurring more than 6 months after the Employer's grant of 9(a) status to the Intervenor, is untimely. The Regional Director's findings are correct under existing Board precedent. See *Central Illinois Construction*, 335 NLRB No. 59 (2001); *Pontiac Ceiling & Partition Co.*, 337 NLRB No. 16 (2001); *Reichenbach Ceiling & Partition Co.*, 337 NLRB No. 17 (2001); and *Verkler, Inc.*, 337 NLRB No. 18 (2001).<sup>1</sup>

Our dissenting colleague disagrees with this existing precedent with regard to both issues. Although as to the contractual language issue he clearly advocates a reversal of *Central Illinois*, he attempts to distinguish existing precedent as to the timeliness issue. Contrary to his contention, in *Pontiac*, *Reichenbach*, and *Verkler*, the Board rejected the argument put forth in his dissent—that the Board should allow a union's 9(a) status to be challenged by another union beyond the 6-month period following its establishment.

<sup>1</sup> Member Bartlett agrees that, under Board precedent, the agreement here contains language sufficient to establish a 9(a) relationship. Accordingly, in the absence of a three-member Board majority to reconsider that precedent, he joins in denying review inasmuch as the petition was not filed within 6 months after 9(a) recognition was granted and thus any claim that the Intervenor lacked majority status at the time of recognition would be untimely. He further notes that the Petitioner will have the opportunity to file a new petition during the upcoming 30-day window period between 60 and 90 days prior to expiration of the current agreement on August 1, 2003.

Those cases, like the present case, arose out of the nationwide dispute between the International Union of Bricklayers and Allied Craftworkers, AFL-CIO, and the Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO. In *Reichenbach* and *Verkler* the Plasterers made the same argument to the Regional Director and the Board that it does here, i.e., that the 6-month period should not begin to run until it had actual notice of the establishment of the Bricklayers' 9(a) status, and in *Pontiac* the Bricklayers made the same argument with regard to the Plasterers' 9(a) status. The Regional Director squarely rejected this argument in each case, and the Board denied review in each case. Accordingly, we find no merit in our colleague's contention that those cases do not require that the petition in this case be dismissed.

Dated, Washington, D.C. September 30, 2002

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Wilma B. Liebman, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER COWEN, dissenting.

Contrary to the Regional Director, I would find that the Intervenor, Bricklayers Local 9, has not provided sufficient evidence to establish that its successive contractual agreements with the Employer create a 9(a) bargaining relationship. Rather, I find that the Intervenor has only a prehire agreement with the Employer that the Act specifically sanctions for the construction industry under Section 8(f). I therefore would process the instant petition filed by the Petitioner, Local 67, Operative Plasterers and Cement Masons, because it raises a question concerning representation under Section 9(c) of the Act.<sup>1</sup>

The Intervenor and the Employer in this case have maintained a bargaining relationship since 1998. Their most recent collective-bargaining agreement is effective from June 22, 2000 through August 1, 2003. In both their initial 1998 contract and the 2000 successor agreement, the Employer and the Intervenor have included contractual language "acknowledg[ing]" that they have a

<sup>1</sup> *John Deklewa & Sons*, 282 NLRB 1375, 1377 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), as discussed infra, holds that 8(f) agreements do not bar the processing of valid petitions filed pursuant to Secs. 9(c) and (e) of the Act. I rely on the Board's decision in *Deklewa* only for purposes of the analysis in this dissent.

9(a) relationship. Thus, these contracts provide, in pertinent part, that:

The Union has submitted to the Employer evidence of majority support, and the Employer is satisfied that the Union represents a majority of the Employer's Employees in the bargaining unit described in the current collective bargaining agreement between the Union and the Employer.

Based on the recent decision *Central Illinois Construction*, 335 NLRB No. 59 (2001), the Regional Director found that the contractual language of the collective-bargaining agreements between the Employer and the Intervenor was sufficient to confer 9(a) status. The Regional Director stressed that in *Central Illinois*, the Board stated that a union may establish 9(a) status in the construction industry where its collective-bargaining agreement with the employer:

unequivocally indicates that (1) the union requested recognition as the majority or Section 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or Section 9(a) bargaining representative; and (3) the employer's recognition was based on the union having shown, or having offered to show, evidence of its majority support. [footnote omitted]

*Id.* at slip op. at 4. Because he found that the contractual language in this case effectively meets all three of these criteria, the Regional Director concluded that the Intervenor has been the Section 9(a) representative of the bargaining unit employees since it entered into a bargaining relationship with the Employer in August 1998. Therefore, he dismissed the instant petition.

Contrary to the Regional Director's analysis, I conclude that there are only two valid means for creating 9(a) status in the construction industry and they are identical to the requirements for unions to attain that status outside the construction industry. In order for unions to become 9(a) bargaining representatives, I would require that they demonstrate their majority status either (1) through certification following a Board-conducted election or (2) through voluntary recognition based on the employer's card check showing that the union holds majority status in the bargaining unit.<sup>2</sup>

<sup>2</sup> I also accept that an employer's polling of the unit employees before initial recognition may be a legitimate vehicle for demonstrating majority status if the polling is done with proper safeguards for the employees' freedom of choice. See *Precision Striping*, 284 NLRB 1110, 1112 fn. 6 (1987).

In *Deklewa*, supra at 1377–1378, the Board set forth four basic tenets governing 8(f) prehire bargaining relationships for the construction industry:

(1) a collective-bargaining agreement permitted by Section 8(f) shall be enforced through the mechanics of Section 8(a)(5) and Section 8(b)(3); (2) such agreements will not bar the processing of valid petitions [for Board certification] filed pursuant to Section 9(c) and Section 9(e); (3) in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement; and (4) upon the expiration of such agreements, the signatory union will enjoy no presumption of majority status, and either party may repudiate the 8(f) bargaining relationship.

Critically, *Deklewa* also held, in line with the criteria for 9(a) status stated above, that there are only two means by which a union may elevate an 8(f) bargaining relationship to 9(a) status with the additional rights and protections that majority status affords: either through a Board election or "from voluntary recognition accorded to the union . . . based on a clear showing of majority support among the unit employees, e.g., a valid card majority." *Id.* at 1387 fn. 53. Furthermore, there is a presumption that a bargaining relationship in the construction industry is 8(f) rather than 9(a), and the burden of proving a 9(a) relationship rests on the party seeking the benefits of majority status.<sup>3</sup>

It is undisputed that a union holds 9(a) status if it prevails in a Board election and receives certification as the unit employees' exclusive bargaining representative. This method of attaining majority status also best serves to protect the interest of the employees' free choice to determine their bargaining representative.

Controversy may arise, however, when the party asserting the 9(a) relationship seeks to establish it by demonstrating, as permitted by the second test in *Deklewa*, that the employer voluntarily granted the union majority recognition. In *NLRB v. Goodless Electric Co.*,<sup>4</sup> the court examined the Board's then-existing requirements for transforming an 8(f) relationship into 9(a) status and found that the Board had been applying a three-pronged test for 9(a) voluntary recognition:

(1) the union must expressly and unequivocally demand recognition as the employees' Section 9(a) representative; (2) the employer must expressly and unequivocally grant the requested recognition; and (3) that demand and recognition must be based on a *contemporaneous* showing that the union enjoys majority

<sup>3</sup> *H.Y. Floors & Gameline Painting*, 331 NLRB No. 44 (2000).

<sup>4</sup> 124 F.3d 322, 328-329 (1<sup>st</sup> Cir. 1997).

support of the employers' workforce. [Emphasis in original.]

I would adopt the *Goodless Electric* criteria for obtaining 9(a) status with the additional requirement that, as stated, the "contemporaneous showing" of majority status may emanate only from a card check that the employer has conducted. As the Fourth Circuit correctly pointed out in *American Automatic Sprinkler Systems*:<sup>5</sup>

The Board's willingness to credit the employer's voluntary recognition absent any contemporaneous showing of majority support would reduce this time-honored alternative to a Board-certified election to a hollow form which, though providing the contracting parties stability and repose, would offer scant protection of the employee free choice that is a central aim of the Act. *Cf. Higdon*, 434 U.S. 335, 349 (651) ("Privileging unions and employers to execute and observe pre-hire agreements in an effort to accommodate the special circumstances in the construction industry may have greatly inconvenienced unions and employers, but in no sense can it be portrayed as an expression of the employees' organizational wishes.").

To summarize my view, the party asserting 9(a) status has the burden either to present a Board certification or evidence of a contemporaneous card majority to establish 9(a) status; otherwise, I would find that the bargaining relationship falls within 8(f), as here.

By contrast, the Regional Director found in this case, based merely on incantational language in the Intervenor's collective-bargaining agreement with the Employer, that the contractual parties had intended to establish a 9(a) relationship and that no further analysis was necessary. I find that the Regional Director erred in not imposing the requirement set forth in both *Goodless Electric* and *American Automatic Sprinkler Systems* that the Intervenor actually demonstrate its majority status as of the time that the Employer granted it recognition. Based on its failure to make this showing, the Intervenor has not met the burden of establishing 9(a) status.

Thus, it is clear that the Intervenor is not the 9(a) bargaining representative of the unit employees. Contrary to the Regional Director, I further conclude that Section 10(b) of the Act does not preclude the Petitioner from challenging the Intervenor's purported 9(a) status. The 10th Circuit in *NLRB v. Triple C Maintenance, Inc.*, 219 F.3d 1147, 1151 (10th Cir. 2000), set forth a two-part test for determining whether unions representing employees

in the construction industry held Section 9(a) status based on "(1) whether the relationship between the union and the employer was governed by Section 8(f) or Section 9(a), and (2) whether Section 10(b) precludes the employer from attacking the formation of a 9(a) relationship." Specifically, regarding the 10(b) prong of this test, the court stated that:

Finally, the manner in which the burdens are allocated to the collective bargaining parties demonstrates the reasonableness of applying a period of limitations in the construction industry. Initially, under *Deklewa*, we presume that a contract formed between a union and an employer primarily engaged in the construction industry is governed by Section 8(f). Once the party asserting a 9(a) relationship demonstrates that the employer has recognized the 9(a) status of the union, then the presumption in favor of Section 8(f) dies and a 9(a) relationship exists. However, a second presumption comes into play when a 9(a) relationship is established. Where a union has demonstrated, at least facially, that a 9(a) relationship exists, it enjoys a presumption of majority status for the duration of the contract or for a reasonable period. In order to reconcile these two presumptions, we hold that if a party challenges the union's majority status within a reasonable period of time from the date of recognition, then the burden remains on the union to prove its majority support in accordance with the initial Section 8(f) presumption. [Footnote omitted.] After a reasonable period of time has passed since the 9(a) recognition, and in keeping with the 9(a) presumption of majority support, it is then reasonable to preclude an attack on the 9(a) relationship based on a lack of majority support. This allocation of burdens also preserves the NLRA's goals of uniformity and stability.

*Id.* at 1159.<sup>6</sup> The Board has consistently held that the burden of proving actual or constructive notice of the operative facts that is sufficient to begin the running of the 10(b) period "rests squarely" on the party asserting it.<sup>7</sup> Critically, as the court stressed in *Triple C Maintenance*, the limitations period "does not begin to run until the parties have notice of the alleged . . . Section 9(a) recognition." *Id.* at fn. 7.

Application of these principles to the present case leads to a different result than the Regional Director

<sup>6</sup> The court's two-part test for resolving this issue is consistent with the Fourth Circuit's analysis in *American Automatic Sprinkler Systems*, which melded the conjunctive criteria there into a single component. As the court itself stated in *Triple C Maintenance*, "[a] close reading of *American Automatic Sprinkler* reveals that its holding does not contradict ours." *Id.*

<sup>7</sup> See, e.g., *R.G. Burns Electric*, 326 NLRB 440, 446 (1998).

<sup>5</sup> 163 F.2d 209, 222 (4th Cir. 1998).

reached. In finding that the Intervenor had 9(a) status, the Regional Director, as stated, relied substantially on the Board's decision in *Central Illinois Construction*,<sup>8</sup> which expressly adopted the 10th Circuit's criteria for the establishment of 9(a) relationships in the construction industry set forth in *Triple C Maintenance* and *NLRB v. Oklahoma Installation Co.*, 219 F.3d 1160 (10th Cir. 2000). Yet, the Regional Director ignored the Tenth Circuit's holding in *Triple C Maintenance* that the union asserting 9(a) status continues to have the burden to prove its majority support if there is a challenge "within a reasonable period of time from the date of recognition." 219 F.3d at 1159.<sup>9</sup> As stated, the burden rested on the Intervenor, as the party asserting the limitations bar in this case, to establish either actual or constructive notice of the alleged 9(a) recognition by the Petitioner. The Intervenor has failed to meet this burden here. In rejecting the Intervenor's 10(b) argument, I note that the record does not establish that either party to the relevant collective-bargaining agreement ever gave a copy of the agreement to the unit employees. The Intervenor, therefore, cannot establish that the unit employees it represents had notice of the asserted 9(a) provision. Moreover, even if the Intervenor did establish that the employees had such knowledge, this showing would not necessarily impute constructive notice to the Petitioner, particularly since it presently lacks any representative status with respect to these employees.<sup>10</sup>

Thus, the Intervenor's argument for finding a 10(b) limitations bar in the present case rests, at best, on incantational language in its collective-bargaining agreement with the Employer that remains subject to challenge under *Triple C Maintenance*. It is well established that the

10(b) limitations period serves as a shield to protect parties from the filing of unfair labor practice charges based on events occurring more than 6 months before the charge date.<sup>11</sup> I do not believe that Congress also intended this section to become a sword to thwart employee free choice in the construction industry by barring attacks, such as the Petitioner's here, on the legitimacy of the incumbent's majority status.<sup>12</sup>

For these reasons, I conclude that existing precedent in *Central Illinois Construction* does not support dismissal of the instant petition. Accordingly, I would reverse the Regional Director and process this petition in order to provide the employees with the opportunity to decide whether they wish to be represented by the Petitioner.

Dated, Washington, D.C. September 30, 2002

William B. Cowen,

Member

NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

<sup>8</sup> I was not on the Board when *Central Illinois Construction* issued, and I do not pass on the validity of the holding there.

<sup>9</sup> The Regional Director instead found that, under *Casale Industries*, 311 NLRB 951, 952-953 (1993), the limitations period of Sec. 10(b) would preclude any future challenge to the Intervenor's purported majority status. *Casale*, in my view, is distinguishable from the present situation. Thus, as the Regional Director pointed out, "[t]he challenge to 9(a) status in *Casale* was interposed not by a third party, but by a participating union that had stipulated to the conduct of a non-Board election that resulted in the grant of 9(a) recognition to the prevailing union." By contrast, there is no evidence that the Petitioner had any knowledge that the Employer and the Intervenor were attempting to confer 9(a) status when they executed the existing collective-bargaining agreement. The presumption under 8(f) is that unions representing construction industry employees do not enjoy majority status. I do not believe that the 10(b) limitations period should be effectively used as a vehicle to rebut this presumption. The better view, and the view of the 10th Circuit which the Board said it was adopting in *Central Illinois*, is to apply the presumption to a bargaining relationship unless the party seeking to establish 9(a) status can meet the relevant test set forth above.

<sup>10</sup> See, e.g., *Nursing Center of Vineland*, 318 NLRB 337, 338 (1995); *Adair Standish Corp.*, 295 NLRB 985, 986 (1989).

<sup>11</sup> See, e.g., *Koppers Co.*, 163 NLRB 517 (1967).

<sup>12</sup> The Board's recent decisions in *Pontiac Ceiling & Partition Co.*, 337 NLRB No. 16 (2001), *Reichenbach Ceiling & Partition Co.*, 337 NLRB No. 17 (2001), and *Verkler, Inc.*, 337 NLRB No. 18 (2001), issued on December 20, 2001, do not require a contrary result. Those cases did not address the question of the sufficiency of notice of the alleged 9(a) relationship in considering the contract bar issue. Under these circumstances, these cases cannot stand for the proposition that the Board so quickly abandoned its clear statement in *Central Illinois Construction* that it was adopting the criteria set forth by the Tenth Circuit. Furthermore, the Petitioner has specifically argued in this case that its petition is not barred due to the absence of evidence that it had knowledge of the Employer's and the Intervenor's intent to establish a 9(a) bargaining relationship.

<sup>1</sup> The Petitioner and Intervenor filed briefs, which were carefully considered.

3. The labor organizations involved herein claim to represent certain employees of the Employer.<sup>3</sup>

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Plasterers Local 67 (the Petitioner), filed the instant petition on June 29, 2001, requesting certification of representative in a bargaining unit comprised of all full-time and regular part-time plasterers employed by Saylor's, Inc. (the Employer) working at and out its facility; but excluding guards and supervisors and all other employees as defined in the Act. Bricklayers Local 9 (the Intervenor), asserts that the Employer is bound to a 9(a) collective-bargaining agreement with the Intervenor effective from June 22, 2000 through August 1, 2003, covering plasterers, which bars the instant petition and requires its dismissal. The Petitioner does not contest the validity of the collective-bargaining agreement, or that the Intervenor has maintained a collective-bargaining relationship with the Employer since approximately August 1998. Instead, the Petitioner contends that despite clear language in the contract establishing the Intervenor's 9(a) status, as a third party to the collective-bargaining agreement it is not foreclosed from challenging the Intervenor's majority status by the filing of the instant petition outside of 6 months from the creation of the collective-bargaining relationship.

The Employer is a plastering contractor in the construction industry and is owned by Jess Saylor. The Employer employs approximately 40–50 plasterers who are covered by the existing contract. Both the existing and expired contracts contain the following recognition language:

The Employer which is a Section 9(a) Employer within the meaning of the National Labor Relations Act, hereby recognizes and acknowledges that the Union is the exclusive representative of all of its Employees in the classifications of work falling within the jurisdiction of the Union, as defined in Article II of this Agreement, for the purpose of collective bargaining.

....

The Union has submitted to the Employer evidence of majority support, and the Employer is satisfied that the

<sup>2</sup> The Employer did not participate in the hearing held on November 5, 2001, and, therefore, the parties were unable to stipulate to the Employer's activities in commerce. The uncontroverted record evidence establishes that the Employer performed between 10–15 jobs as a plastering contractor outside the State of Michigan. The gross revenues to the Employer from these jobs, all of which were performed in the State of Ohio, were estimated to be well in excess of \$50,000.

<sup>3</sup> Since the Employer did not participate in the hearing, testimony was adduced from both the Petitioner and Intervenor concerning their labor organization status. The record establishes that both the Petitioner and Intervenor have numerous collective-bargaining relationships and agreements with various employers and multiemployer associations throughout the State of Michigan. Both organizations exist for the purpose of dealing with employers concerning grievances, wages, hours, and working conditions. Employees participate in both organizations, wherein they elect officers, and both organizations have bylaws governing their operations.

Union represents a majority of the Employer's Employees in the bargaining unit described in the current collective bargaining agreement between the Union and the Employer.

The Employer therefore voluntarily agrees to recognize the Union as the exclusive bargaining representative of all Employees in the contractually described bargaining unit on all present and future jobsites within the jurisdiction of the Union, unless and until such time the Union loses its status as the Employees' exclusive representative as a result of a NLRB election requested by the Employees.

The Employer and the Union acknowledge that they have a 9(a) relationship as defined under the National Labor Relations Act and that this Recognition Agreement confirms the on-going obligation of both parties to engage in collective bargaining in good faith.

The Intervenor relies entirely upon the foregoing language to establish that its bargaining relationship is governed by Section 9(a), thereby barring the instant petition that has been filed mid-term of the existing contract. Showing that a construction industry employer has granted voluntary recognition under Section 9(a) may be accomplished by an examination of either contractual language standing alone, or surrounding circumstances. Proof by way of the former is governed by *Staunton Fuel & Material*, 335 NLRB No. 59 (2001), in which the Board expressly adopted the approach taken by the U. S. Court of Appeals for the 10th Circuit in *NLRB v. Triple C Maintenance, Inc.*, 219 F.3d 1147 (10th Cir. 2000), and *NLRB v. Oklahoma Installation Co.*, 219 F.3d 1160 (10th Cir. 2000).

In *Staunton Fuel*, the Board held that a recognition agreement or contract provision will be independently sufficient to establish a union's 9(a) status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) bargaining representative; (2) the employer recognized the union as the majority or Section 9(a) representative; and (3) the employer's recognition was based upon the union having shown, or having offered to show, evidence of its majority support.

Based on the foregoing language, under the standards articulated in *Staunton Fuel*, the parties have clearly set forth their intent to create a relationship authorized by Section 9(a) of the Act. Although the language does not specifically state that the Intervenor requested recognition, it states that the Employer granted 9(a) recognition based upon evidence submitted by the Intervenor, which clearly indicates that the Intervenor requested recognition from the Employer. *Nova Plumbing*, 336 NLRB No. 61 (2001). It also clearly states that the Employer recognized the Intervenor as the majority representative based on evidence submitted by the Intervenor to the Employer that the Intervenor represents a majority of the employees in the unit. Accordingly, as of August 1998 the Intervenor was the exclusive collective-bargaining representative of the Employer's employees pursuant to Section 9(a) of the Act.

However, relying on a footnote in *H.Y. Floors & Gameline Painting*, 331 NLRB 304 (2000), the Petitioner contends that since it is a third party to the contract between the Employer

and the Intervenor, the contract should not bar the instant petition regardless of the limitations contained in Section 10(b) of the Act. In *H. Y. Floors*, the Board found that an individual employee-petitioner, a nonparty to a recognition agreement between his employer and the union, was not estopped from challenging 9(a) recognition of the union. Furthermore, the Board found that the individual had timely challenged the union's majority status by filing a decertification petition within seven weeks of the initial grant of recognition, but in a footnote specifically did not pass on whether such a representation petition must be filed within 6 months of the recognition as discussed in *Casale Industries*, 311 NLRB 951, 952 fn. 8 (1993).

In *Casale*, the Board ruled, "if a construction industry employer extends 9(a) recognition to a union, and six months elapse without a charge or petition, the Board should not entertain a claim that majority status was lacking at the time of recognition." *Casale*, supra at 953. However, the Board limited its holding to situations where the parties clearly intended to create a 9(a) relationship and distinguished cases where there is no showing that the parties meant to forge a relationship under 9(a). See *J & R Tile*, 291 NLRB 1034 (1988); *Brannon Sand & Gravel Co.*, 289 NLRB 977 (1988); *American Thoro-Clean*, 283 NLRB 1107 (1987). The challenge to 9(a) status in *Casale* was interposed not by a third party, but by a participating union that had stipulated to the conduct of a non-Board election that resulted in the grant of 9(a) recognition to the prevailing union.

Since the parties clearly intended to create a 9(a) relationship in the instant case, *Casale* likewise governs an attack on the Intervenor's status. In *Casale*, 311 NLRB at 953, the Board noted the Supreme Court's admonishment in *Machinists Local Lodge 1424 v. NLRB (Bryan Mfg.Co.)*, 362 U.S. 411 (1960) that:

In nonconstruction industries, if an employer grants Section 9 recognition to a union and more than 6 months elapse, the Board will not entertain a claim that majority status was lacking at the time of recognition. A contrary rule would mean that longstanding relationships would be vulnerable to attack, and stability in labor relations would be undermined.

Because the Board in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), ruled that unions in the construction industry should not be treated less favorably than those in nonconstruction industries, the Court's concern for stability of labor relations in long-standing bargaining relationship is no less applicable to the instant Employer. More than 3 years has elapsed in the present case since the grant of 9(a) recognition to the Intervenor. The identity of the party attacking a long-standing bargaining relationship hardly minimizes the instability created by an untimely challenge to the union's majority status. Yet, the Petitioner argues that since it was not aware of the 9(a) nature of that relationship, it should not be subject to any time limitation in raising a challenge to the Intervenor's majority status. It is noteworthy, however, that the Petitioner's showing of interest derives from employees who have been covered by successive collective-bargaining agreements that clearly bestow 9(a) status on the Intervenor. Obviously, the employees have been well

aware of the Intervenor's status as the majority representative. It is inconceivable that employees could have avoided the result in *Casale* by authorizing a labor organization other than one that had participated in the initial election to years later challenge that incumbent's 9(a) status. Instead, it appears more logical to sanction only timely challenges to majority status that are made within 6 months of recognition, despite any reservations in *H. Y. Floors*.

Consequently, I find that the Petitioner's attack on the Intervenor's 9(a) status is untimely and that the current collective-bargaining agreement acts as a bar to the instant petition.<sup>4</sup>

IT IS ORDERED, based on the foregoing and the entire record, that the petition is dismissed.<sup>5</sup>

Dated November 27, 2001

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<sup>4</sup> In its post-hearing brief, the Petitioner contends that even if the instant petition is barred, an election should nevertheless be ordered in a unit of plasterers that fall outside the geographic coverage of the Intervenor's contract. However, this issue was not litigated at the hearing and the unit as described by the petition does not encompass such a request. Furthermore, there is no record evidence that any of the Employer's employees currently work outside the geographic confines of the contract, or that the Petitioner has an adequate showing of interest limited to any such employees. Consequently, if the Petitioner desires a unit other than that covered by the Intervenor's contract, it must file such a petition commensurate with such a request and supported by the requisite showing of interest.

<sup>5</sup> Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 11, 2001.